IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 209 OF 1980
WITH
CIVIL APPLICATION NO. 5476 OF 1986

1. Maruti Ramaji Patil since deceased by his heirs & legal representatives:-

a) Ananda Maruti Patil
b) Smt. Jaitabai Maruti Patil
c) Smt. Tulsabai Maruti Patil
All residing at Panore, Taluka: Panhala, District: Kolhapur.

2. Sambhaji Dattatraya Patil aged about 54 yrs.

3. Rajaram Dattatraya Patil aged about 51 yrs.

Nos.2 & 3 r/o Panore, Taluka Panhala, Dist. Kolhapur.

4. Shivaji Dattatraya Patil since deceased by his heirs:-

a) Gangabai Shivaji Patil Age 64 yrs.
b) Vilas Shivaji Patil Age 45 yrs.
c) Vasant Shivaji Patil Age 39 yrs.
d) Eknath Shivaji Patil Age 32 yrs.
e) Akkabai V. Patil Age 47 yrs.

Nos.4(a) to 4(d) r/o Panare Tal: Panhala, Dist. Kolhapur.

No.4(e) r/o Vetvade, Tal:Panhala,

Dist. Kolhapur.

5. Dinkar Dattatraya Patil
aged about 42 yrs.
R/o Panore, Taluka Panhala,
District: Kolhapur. ..Petitioners

V/s.

1. Babu Dhondi Mohite
aged about 34 years.

2. Nanu Dhoni Mohite
aged about 37 years.

3. Smt. Rayanabai Anna Mohite
aged about 49 years.

4. Ramchandra Annappa Mohite
aged about 24 years.

5. Shamrao Annappa Mohite
aged about 21 years.

6. Hari Annappa Mohite
aged about 18 years.

7. Vishnu Annappa Mohite
aged about 12 years.

8. Kisan Annappa Mohite
aged about 15 years.

9. Kum. Balabai Annappa Mohite
aged about 9 years.

10. Manohar Dnyanu Mohite
since deceased by his heirs:-
a) Smt. Sonabai Dnyanu Mohite
aged about 60 yrs.
b) Smt. Axmi Manohar Mohite
aged about 38 yrs.
c) Anil Manohar Mohite
aged about 20 yrs.
d) Sunil Manohar Mohite

aged about 18 yrs.

11.Jaysing Dnyanu Mohite
aged about 11 yrs.

12.Smt. Sonabai Dnyanu Mohite
aged about 38 yrs.

Nos.7,8 and 9 Minors by their
guardian mother respondent no.3.

No.11 Minor by his guardian
mother Respondent No.12.

Respondent No.1 is the manager of the
Joint Hindu family consisting of
Respondent Nos.1 to 12.

13.Smt. Hirabai Santu Patil
aged about 59 yrs.

14.Smt.Hirabai Dinkar Mohite
aged about 59 yrs.

Nos.1 to 12 residing at
Harapavade, Taluka Panhala,
District: Kolhapur.

No.13 residing at Amashi,
Taluka Karvir, Dist. Kolhapur

No.14 residing at 701, "E" Ward,
Line Bazar, Kolhapur,
Dist: Kolhapur.

15.The Maharashtra Revenue Tribunal
through its member Shri S.T. Mane,
Notice to be served upon the
Registrar, Maharashtra Revenue
Tribunal, Secretariat Annexe
Building, Bombay-32. ..Respondents

Mr. H.D. Gole for petitioners.
Mr. I.M. Khairdi h/f Mr. V.B. Naik for respondents.

CORAM: B.H. MARLAPALLE, J.

Date : June 08, 2006.

ORAL JUDGMENT:

1. This petition filed by the original landlords has brought in question the order passed by the Assistant Collector, Shahuwadi Division, Kolhapur on 28/7/1978 allowing an application filed under Section 84 of the Bombay Tenancy and Agricultural Lands Act, 1948 (the Act for short) and subsequently confirmed by the learned Member of the Maharashtra Revenue Tribunal at Kolhapur on 18/9/1979 by rejecting Revision Application No. 256 of 1978.

2. The facts briefly stated are that the agricultural land located in Survey No.60/1 admeasuring 2 Acres and 29 Gunthas and in Survey No.60/2 admeasuring 2 Acres and 4 Gunthas belong to the original petitioners no.1 and 2 i.e. Maruti Ramaji Patil and Dattatraya Ramaji Patil. Mr. Dhondi Babu Mohite was the tenant on the said land and he died on 20/12/1974. His LRs i.e. present respondents submitted an application under Section 84 of the Act

to the Tahasildar on or about 19/7/1976 claiming that Dhondi Mohite was the tenant as on 1/4/1957 on the subject land and he was dispossessed sometimes in the year 1958-59 by the landlords forcibly and without obtaining any order from the Mamlatdar under Section 29 of the Act. They also claimed that late Dhondi did not surrender the land to the landlords on his own for any reasons whatsoever. The Tahasildar conducted an inquiry by recording the evidence of both the parties and submitted his report to the Assistant Collector. The case before the Tahasildar was registered as Tenancy Case No.7 of 1976, whereas on the report being submitted to the Assistant Collector, it was registered as Tenancy Appeal No.3 of 1976 and the said appeal was decided on 28/7/1978. The application submitted by the tenants was allowed with a further declaration that the possession of the landlords over the subject land was illegal and it was further directed that they shall be summarily evicted from the land.

3. The Assistant Collector framed the following three issues for his considerations:-

(a) Whether Dhondi surrendered his land to the landlords?

(b) Whether Dhondi was the tenant on the suit land on 1/4/1957?

(c) What is the nature of the lease?

. The third issue was framed mainly because the landlords, while opposing the application filed under Section 84, had also taken an additional plea that the land was leased out for cultivation of sugarcane and, therefore, in view of the provisions of Section 43-A of the Act, the scheme of Section 32-G etc. was not applicable to the suit land. The landlords also claimed in defence that there was an oral settlement with Dhondi and consequent to the same he was given 23 Gunthas of land from the total of 4 acres and 33 gunthas and the remaining land was surrendered to the landlords much before 1/4/1957.

4. The Assistant Collector considered the record, namely, 7 x 12 extracts and the depositions of Maruti Ramaji Patil. It was noted that the record proved the cultivation of Dhondi of the suit land till the year 1957-58 and only from the year 1958-59 the record

showed that the landlords were cultivating the land. In fact, Maruti Ramaji Patil in his depositions had admitted that the landlords had obtained possession of the land in 1958-59 and in the cross-examination he clearly stated that the said possession was obtained without any orders of the Tenancy Court. The Assistant Collector, therefore, recorded a finding that Dhondi did not surrender the land to the landlords on 1/4/1957 or any time thereafter and that the landlords had forcibly taken possession of the suit land sometimes in the year 1958-59. Dhondi was in possession of the suit land as on 1/4/1957 and he was cultivating the same. Thus, he was a deemed purchaser under Section 32 of the Act.

5. Regarding the nature of the lease, the onus was on the landlords to prove that the lease was for cultivation of sugarcane and they failed to bring any evidence to this effect. In the paper-book of Civil Application No.5476 of 1986 filed in this petition, the 7 x 12 extracts upto the year 1957-58 does show that the land was under cultivation of rice, sugarcane and some land was fallow, so far as the in Survey No.60/1 is concerned. So far as the land in Survey

No.60/2 is concerned, 4 gunthas was shown to be a Pot Kharaba land and remaining 1 acre and 39 gunthas was under cultivation of rice and sugarcane. It was for the landlords to prove by other evidence that most of the land was, in fact, under sugarcane cultivation and the lease specifically stated that it was lease for the same cultivation. The landlords failed to discharge their burden and, therefore, the findings recorded by the Assistant Collector that the landlords failed to prove that the land was given for sugarcane cultivation has been rightly accepted by the Revenue Tribunal.

6. The learned counsel for the petitioners also referred to the observations made by the Assistant Collector regarding re-grant of the land to the landlords by the Tahasildar on the basis of the payment of six times assessment in August, 1956. Admittedly, when the Assistant Collector passed an order on 28/7/1978 there was no order or re-grant and perhaps the landlords deposited the six times assessment amount in August 1956, the re-grant order has been passed on 6/2/1979 by the Tahasildar obviously without knowing that the eviction order was

passed against the landlords on 28/7/1978 in the Tenancy Appeal. Even acreage of the land, as set out in the re-grant order dated 6/2/1979 does not tally with the acreage stated in the order passed by the Assistant Collector and in any case the said order would not come in the way of the tenants so as to defeat their application under Section 84.

7. Lastly, the learned counsel for the petitioners reiterated the issue of tenability of the application under Section 84 of the Act and as per him the tenants, who have filed the application under Section 29 instead of Section 84 of the Act. If the application was filed under Section 29 it would be obviously hit by the limitation. Even otherwise the Revenue Tribunal has dealt with this issue as well and held that the application was rightly filed for summary eviction under Section 84 of the Act as the tenant was forcibly dispossessed of the suit land sometimes in the year 1958-59. The learned counsel for the petitioners relied upon the decision in the case of Vallabbhai Nathabhai vs. Bai Jivi and ors. **(AIR 1969 SC 1190)**. The law laid down by the Apex Court in Vallabbhai's case supports the impugned

order. An application under Section 29 is required to be filed in the cases where the inquiries under subsections (2) to (4) therein are required to be made or where the tenant had purportedly surrendered the land voluntarily. The case of the tenants before the Tahasildar originally was that Dhondi was dispossessed forcibly and at no point of time he had surrendered the land or the tenancy was terminated by the order of the Mamlatdar. The application was for summary eviction and it was rightly entertained under Section 84 of the Act.

8. The learned counsel for the petitioners then claimed that the application filed as on 19/7/1976 under Section 84 of the Act was hit by limitation or it was so belatedly filed that it could not have been entertained. Section 84 of the Act does not prescribe any period of limitation. It is a fact that during the life time of Dhondi such an application was not filed but that does not mean that the Tahsildar or the Assistant Collector committed an illegality in entertaining such an application. By the operation of Section 32 of the Act, Dhondi had become the deemed purchaser of the suit land as he was in actual

possession and cultivation of the same land as on 1/4/1957 and he was illegally dispossessed. In such a situation the restoration application, even though was not made by Dhondi, it cannot be said that his LRs could not have submitted such an application on 19/7/1976 i.e. after about one and half years of their father's demise. Thus on all counts the impugned orders do not suffer from any error apparent on the face of the record and, therefore, there is no case made out to interfere in the same under Article 227 of the Constitution.

9. In the result, this petition fails and the same is hereby dismissed. Rule discharged. Interim order stands vacated. No costs.

. Civil Application No.5476 of 1986 for producing additional evidence on record is allowed.

(B.H. Marlapalle,J.)